IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1592 OF 2006.

Samirulnissa Gulamali Khan & Ors. ...Appellants

Versus

Arnavas Jal Mistry & Anr. ...Respondents

Shri M.B.Kotak for the Appellants.

CORAM : ABHAY S.OKA, J.
DATED : 03rd December, 2007.

JUDGMENT:

1. Heard advocate appearing for the appellants. The appellants are the original claimants in a claim under section 166 of the Motor Vehicles Act, 1988. The first appellant is the widow of the victim of the accident and 2nd to 7th appellants are the children. It is stated that now the 2nd and 3rd appellants have attained majority but 4th to 7th appellants are still minors.

2. There was a compromise in the claim petition. The appellants accepted the total amount of Rs.03,50,000/- by way of settlement inclusive of amount payable under the No Fault Liability. The learned Member of the Tribunal directed that a sum of Rs.50,000/- shall be paid to the first appellant and a sum of Rs.15,000/- each shall be invested in the names

of 2nd to 7th appellants. The balance amount was ordered to be kept in fixed deposit in any nationalised bank for a period of five years in the name of the first appellant with permission to the first appellant to withdraw interest.

3. The grievance of Shri Kotak, learned counsel for the appellants is that this is a case where even the amount payable under section 140 of the said Act of 1988 was not paid and considering the borrowings made by the first appellant it is impossible for the first appellant to maintain the minor children as she has been permitted to withdraw only a sum of Rs.50,000/-. His submission is that the invested amount in the name of the first appellant will fetch a very meagre interest. He, therefore, submitted that the award needs to be modified. He placed reliance on order dated 07th November, 2006 passed by this Court in First Appeal No.2649 of 2006 as well as a judgment of the Division Bench of this Court in the case of Pavitra Shivling Doifode and others Vs. Nathuram K. Maral and another (1989 ACJ 184).

4. I have carefully considered the submissions. As of today, the 4th to 7th appellants are still minors. As per the order of the Tribunal a sum of Rs.50,000/-

has been ordered to be paid to the first appellant and a sum of Rs.15,000/- each has been ordered to be deposited in the names of 2nd to 7th appellants. Thus, the balance amount of Rs.02,10,000/- has been ordered to be invested in the name of the first appellant.

5. It cannot be ignored that even as of today 4th to 7th appellants are minors and therefore substantial amount needs to be invested. However, order for investment of sum of Rs.02,10,000/- is harsh to some extent. In my view, only modification which is required to be made is that out of the amount invested in the name of the first appellant a further amount of Rs.50,000/- shall be paid to the first appellant and rest of the amount will be governed by the award which is already made.

6. Hence, the Appeal is disposed of by passing following order:

(i) Out of the amount invested in the name of the first appellant, a sum of Rs.50,000/- shall be paid to the appellant by pre-mature encashment of the fixed deposit. However, the balance amount will be invested afresh by the Tribunal in fixed deposit in the name of the 1st

appellant for a period of five years from the date on which the pre-mature encashment of the fixed deposit is made. It is made clear that the first appellant will be entitled to withdraw interest accrued on the amount deposited in her name. The award is modified accordingly.

(ii) There will be no orders as to costs.

(iii) Writ to be sent immediately.

JUDGE